

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JASON XERXES DENNIS,

Plaintiff,

v.

GOOGLE/GOOGLE PLUS, et al.,

Defendants.

CASE NO. C20-1347 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Michelle L. Peterson, United States Magistrate Judge, Dkt. 7, and Plaintiff’s objections to the R&R, Dkt. 8.

On September 10, 2020, Dennis filed a motion for leave to proceed *in forma pauperis* and proposed prisoner civil rights complaint under 42 U.S.C. § 1983. Dkt. 1. On October 14, 2020, Judge Peterson granted the application to proceed *in forma pauperis* and ordered Dennis to show cause why the action should not be dismissed for failure to identify a viable defendant. Dkts. 3, 5. On November 2, 2020, Dennis responded. Dkt. 6. On November 24, 2020, Judge Peterson issued the R&R, recommending that Dennis’s action be dismissed with prejudice under 28 U.S.C. § 1915(e)(2)(B)(ii) and counted as a

1 strike under 28 U.S.C. § 1915(g). Dkt. 7. On December 14, 2020, Dennis filed objections.
2 Dkt. 8.

3 The district judge must determine de novo any part of the magistrate judge's
4 disposition that has been properly objected to. The district judge may accept, reject, or
5 modify the recommended disposition; receive further evidence; or return the matter to the
6 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

7 Dennis brings suit under 42 U.S.C. § 1983 against Google/Google Plus and Virgie
8 Garabitez Dennis, his ex-wife. In the order to show cause and again in the R&R, Judge
9 Peterson explained § 1983's requirement that a plaintiff show he suffered a violation
10 proximately caused by a person acting under color of state law and explained that Dennis
11 had not alleged facts suggesting that either Google/Google Plus or Ms. Dennis could be
12 considered a state actor. Dkt. 7 at 2–3 (citing *Crumpton v. Gates*, 947 F.2d 1418, 1420
13 (9th Cir. 1991); *West v. Atkins*, 487 U.S. 42, 49 (1988)). In Dennis's objections, he
14 requests that the Court issue a subpoena so that he may secure evidence in support of his
15 claims, explains that he is undergoing a mental health evaluation as to the damage the
16 Defendants caused to his mental state, and requests assistance understanding the Court's
17 legal language. Dkt. 8. However, he again does not suggest a basis to find the named
18 defendants subject to suit under § 1983, and the Court agrees with the R&R that this is
19 fatal to his claims.

20 The Court having considered the R&R, Plaintiff's objections, and the remaining
21 record, does hereby find and order as follows:

22 (1) The R&R is **ADOPTED**;

- 1 (2) Dennis's complaint, Dkt. 4, and this action are **DISMISSED with**
2 **prejudice** and the Clerk shall count this dismissal as a strike under 28
3 U.S.C. § 1915(g);
4 (3) Dennis's *in forma pauperis* status is **REVOKED** for purposes of appeal;
5 (4) The Clerk shall enter a JUDGMENT and close the case; and
6 (5) The Clerk is directed to send copies of this Order to Dennis and to Judge
7 Peterson.

8 Dated this 25th day of January, 2021.

9
10 
11

BENJAMIN H. SETTLE
United States District Judge